

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

EMILIO VEGA,)	
)	
Petitioner,)	
v.)	Civil Action No. 08-3253-CV-S-ODS-H
)	
MARTY C. ANDERSON, Warden,)	
United States Medical Center,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges actions of the Bureau of Prisons ["BOP"]. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to state a constitutional violation and has otherwise failed to exhaust administrative remedies, it must be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner alleges that respondent has exhibited a deliberate indifference to his serious medical needs by denying him a kidney transplant.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner filed a Motion to Withdraw. Thereafter, petitioner was granted an opportunity to file a pro se traverse, which he has not done.

Having fully reviewed the record in this case, the Court finds that petitioner has failed to establish a constitutional violation due to a denial of serious medical care. Estelle v. Gamble, 429 U.S. 97, 106, reh'g denied, 429 U.S. 1966 (1976); Farmer v. Brennan, 511 U.S. 825 (1994). The

record indicates that petitioner has been fully evaluated for a kidney transplant, and that the process is on-going. While he is considered an excellent candidate for a kidney transplant, a transplant team has recommended against proceeding with the evaluation until petitioner's peripheral vascular disease is treated. Given the fact that petitioner has been evaluated by a team of specialists and because his evaluation for a kidney transplant is still in the process, it cannot be said that the treatment he has received has fallen below constitutional standards. Further, the Court is without the discretion to second-guess the opinions rendered by medical experts where there has been, as in the instant case, significant medical attention. Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987). Additionally, it should be noted that petitioner has not exhausted available administrative remedies. Because petitioner has failed to establish that he has suffered a constitutional violation in this case and has failed to exhaust available administrative remedies, it must be recommended that the petition herein for a writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, CHIEF
United States Magistrate

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.

Date: 2/10/09